

Application No.: 10/775,734
Filing Date: February 9, 2004

REMARKS

By this paper, Claim 1 has been amended. Support for the amendment to Claim 1 can be found at least in paragraph [0044], which describes the insertion of a stem of a stemmed container through a slot 31, and in Figure 4, which clearly illustrates the positioning of a stemmed glass such that the stem of the stemmed glass extends past the L-shaped prong. Applicant respectfully submits that this clarifying amendment does not raise any new issues, nor does it add new matter.

Entry of this amendment after final is appropriate. It does not raise new issues requiring further searching. It simply makes explicit that which was implicit, and prevents a misreading of the claims, by specifying that the stem passes through the slot. It is also believed to simplify issues for appeal or, more specifically, to place the case in condition for allowance. For all of these reasons, entry of this simple, clarifying amendment after final is respectfully requested.

Rejection of Claims 1-10 Under 35 U.S.C. § 112, First Paragraph

Claims 1-10 were rejected by the Examiner under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. In response, Applicant has amended Claim 1 to clarify that the stem of a stemmed glass passes through a slot and into a position where the stem extends past the L-shaped prong. Applicant respectfully submits that Claim 1, as amended, is clearly supported both by the specification and the figures as filed, and that Claim 1 complies with the written description requirement.

Rejection of Claims 1-10 Under 35 U.S.C. § 103(a)

The Examiner has maintained the rejection of Claims 1-10 under 35 U.S.C. § 103(a) as unpatentable over U.S. Patent No. 5,950,856 to Cinque in view of U.S. Patent No. 3,381,825.

In doing so, the Examiner has stated that:

the L-shaped prongs of Bessett can be moved outwardly to be spaced a width wide enough to allow a stemmed glass base that is wider than a stem and narrower than opening 16 to pass through and below at least one if not all of the L-shaped prongs. The opening 16 is narrow enough to engage a stemmed glass bowl wider than the opening's diameter. Therefore, the second end is configured to retain certain stemmed glasses such that a base of such glass is configured to retain certain stemmed glasses such that a base of such glass is positioned below the L-shaped prong. Insofar as shown by applicant, Bessett's opening 16 and L-

shaped prong is capable of permitting the passage of a stem of a glass past the L-shaped prong.

As previously noted by Applicant, Bessett includes cup-accommodating openings comprising fingers 21 having upwardly extending projections 23. Prior to the insertion of a cup, these fingers are in a substantially coplanar position, as can be seen in Figures 1 and 4. *See* Bessett, col. 1, ll. 48-52. Upon placement of a cup within the opening, the fingers move downward, and the upwardly extending projections 23 cooperate with one another to subtend and contact the underside of the accommodated cup. *See* Bessett, col. 1, ll. 52-54. Retention of an undersized cup within the opening is dependent upon the base of the cup not moving beyond the projections 23, which would result in an undersized cup falling through the opening.. *See* Bessett, col. 2, ll. 26-29.

Applicants respectfully submit that, in the normal course of operation, the base of a cup or glass retained within the opening would not pass below the fingers 21 of Bessett. The Examiner has asserted that the L-shaped prongs can be moved outwardly to allow the base of a stemmed glass to pass through. Applicant notes that this could only occur if the fingers 21 were manually manipulated to pull the fingers 21 apart far enough that the base could pass through.

The Examiner's proposed combination thus requires that the device of Bessett be operated in a manner different from and contrary to what taught by Bessett, in that a device configured to accept and retain a cup simply by placing the cup into an opening is operated instead by manually and simultaneously moving multiple fingers 21 out of the way. In addition, this is done to permit movement of the base of a glass beyond the base of the fingers 21, when the purpose of the fingers is to prevent such movement.

Applicant respectfully submits that there would be no reason, other than hindsight, for a person of ordinary skill in the art to circumvent the intended operation of the Bessett device and to combine it with Cinque to solve a problem not recognized in either reference. This combination requires the fingers 21 of Bessett to be manually operated in a manner not taught by Bessett in order to prevent the fingers 21 from performing their intended function and to allow the base of a stem glass to pass through. Thus, Applicant respectfully submits that Claim 1, as amended is patentable over the combination of Cinque and Bessett, as there would be no non-hindsight reason to combine the two references.

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No Disclaimers or Disavowals

Although the present communication may include alterations to the application or claims, or characterizations of claim scope or referenced art, the Applicants are not conceding in this application that previously pending claims are not patentable over the cited references. Rather, any alterations or characterizations are being made to facilitate expeditious prosecution of this application. The Applicants reserve the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child or related prosecution history shall not reasonably infer that the Applicants have made any disclaimers or disavowals of any subject matter supported by the present application.

Conclusion


Applicant respectfully submits that the clarifying amendment to Claim 1, along with the arguments above, has addressed the Examiner's rejections of Claims 1-10. Applicant respectfully requests the withdrawal of the pending rejections and the allowance of Claims 1-10.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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Dated: 4-21-08

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AMEND

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